IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3365 of 1998

For Approval and Signature:

HON'BLE MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAGHUNATH HIRAMAN WAGH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3365 of 1998

MR IS SUPEHIA for Petitioner

MR DIPEN DESAI AGP for Respondents

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 05/08/2004

ORAL JUDGEMENT

The petitioner, a retired Government servant, challenges the Order dated 2nd March, 1998 made by the State Government imposing deduction of Rs. 589=50p. from the monthly pension of the petitioner for a period of ten years. On 21st August, 1993, disciplinary proceeding came to be initiated against the petitioner, a Head Constable under the District Superintendent of Police, Valsad, for several acts of misconduct amounting to lack of integrity and of conduct, unbecoming of a Police Officer. The alleged acts of misconduct were committed by the petitioner in respect of a criminal complaint lodged before the learned Judicial Magistrate, First Class, Vansda which came to be referred to the Police for investigation as Police Station Register M.Case No.6 of 1987. Pending the disciplinary proceeding, the petitioner retired from service on 30th June, 1995. The disciplinary proceeding continued against the petitioner under Rule 189A of the Bombay Civil Services Rules. Considering the extent of guilt proved against the petitioner, the aforesaid penalty has been imposed upon the petitioner. Feeling aggrieved, the petitioner has preferred the present petition.

Learned advocate Mr. Supehia has submitted that in conducting the said disciplinary proceeding, breach of aforesaid Rule 189A has been committed. The impugned order of deduction in pension has been made by the State Government. By such order, the petitioner is deprived of a right to appeal before the Appellate Authority and to revision before the State Government. He has also submitted that the disciplinary proceeding is vitiated on account of delay. He has submitted that the incidents in question were that of the year 1988 for which the disciplinary proceeding was initiated as late as in the year 1993. The petitioner has not been given fair opportunity of defence in as much as the documents demanded by the petitioner in his defence were not supplied to the petitioner. The petitioner has also not been given opportunity of personal hearing before the State Government.

Mr. Supehia has submitted that the aforesaid Rule 189A provides that in case where a disciplinary proceeding is initiated against the delinquent Government servant before his retirement, such proceeding shall, after his retirement, be deemed to be a proceeding under the said Rule 189A and shall be continued and concluded by the authority by which it was commenced. He has submitted that the disciplinary proceeding against the petitioner was initiated by the District Superintendent of Police. Under the Police [Punishment & Appeal] Rules,

it is the District Superintendent of Police who is the disciplinary authority. The said inquiry, therefore, should have been completed by the District Superintendent of Police. In that case, the petitioner would have had opportunity of departmental appeal before the appellate authority and of revision before the State Government.

I see no substance in this contention. The said Rule 189A specifically confers power on the Governor, inter alia, to withhold or withdraw a pension or any part of it, whether permanently or for a specified period and the right of ordering recovery from pension of the whole or part of any pecuniary loss caused to the Government, if in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service. Thus, the right to withdraw or withhold the payment of pension or any part of it cannot be exercised by any authority other than the Governor. The contention that the order of punishment ought to have been made by the District Superintendent of Police, therefore, fails. It is the exclusive power of the Governor to be exercised in accordance with the Rules of Business. The alleged loss of right to appeal and revision is, therefore, imaginary. Against the order of the Governor, the delinquent pensioner cannot have a right to departmental appeal or revision before the State Government.

It appears that the incidents in question arose during the investigation of the aforesaid M.Case No. 6 of 1987 which was entrusted to the petitioner during 20th April, 1988 to 20th June, 1988. On perusal of the records, it appears that the petitioner came to be dismissed from service on 20th June, 1988. He was then reinstated in service by Order of the State Government passed in Revision Application on 16th January, 1992. In view of his dismissal from service on 20th June, 1988 the question of initiation of disciplinary proceeding would not arise. As the petitioner was reinstated in service in the month of January, 1992, the proceeding initiated in the month of August, 1993 cannot be said to be grossly belated so as to vitiate the disciplinary proceeding.

As to the fair opportunity of defence, learned advocate Mr. Supehia has relied upon the applications dated 23rd August, 1993 and 16th August, 1994 made by the petitioner calling upon the Disciplinary Authority/the Presiding Officer to furnish the documents mentioned therein to the petitioner. I have perused the list of documents referred to in the above referred letters dated 23rd August, 1993 and 16th August, 1994. The said

documents do not appear to be relevant for the purpose of defence of the petitioner. The petitioner has not established why the said documents were relevant for his defence or what did he intend to prove from the said documents. It is also not demonstrated or even alleged that the petitioner's defence was prejudiced in absence of the said documents. I am, therefore, of the view that by not furnishing the said documents, the petitioner cannot be said to have been deprived of fair opportunity of defence. As to the personal hearing, this Court has in the matter of R.M Bajpaee v. State of Gujarat & Ors., [1985 (2) GLR 1261] held that, "..in proceedings of a judicial nature, the basic rules of natural justice must be followed but it is not necessarily an incident of the rule of natural justice that personal hearing must be given to the party likely to be affected by the order. Except in proceedings in Courts, a mere denial of opportunity of making oral representation will not, without more, vitiate the proceedings." Further, it is not even the case of the petitioner that he did request for personal hearing before the State Government and that such request was refused or not accepted. Neither the disciplinary proceeding nor the impugned order would be vitiated for want of personal hearing to the petitioner.

At last, Mr. Supehia has submitted that the punishment imposed upon the petitioner is too harsh and is not commensurate to the guilt established against the petitioner. He has relied upon the judgment of this Court in the matter of Kalusinh Gamalsinh v. Deputy Secretary, Home Department & Another [1993 (2) GLR 1278]. In the said matter, a deduction of Rs. 75/= from the monthly pension of the delinquent was imposed under the aforesaid Rule 189A. The Hon'ble Court held that, "..Every miconduct does not call for a severe penalty of dismissal or removal. The nature of misconduct is to be kept in mind while imposing the penalty. The right to impose penalty carried with it the duty to act justly. The penalty imposed must be commensurate with the gravity of the misconduct and any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution of India." This Court further held that, "..It is requied to be noted that the misconduct was committed while the petitioner was in service. It is also true that the misconduct cannot be viewed leniently and that too for an officer serving in the police force. At the same time, it shall have to be kept in mind that the employee is already out of employment as he has retired from service. There is no possibility of his repeating the misconduct and therefore impugned penalty cannot be said to have preventive objective. This

penalty has, even no deterrent effect so far as the employee is concerned. The employee is simply required to be reminded of the lapses committed by him and that reminder can be given by deduction of token amount from his pension. Therefore, the penalty in this case as one which actually has no deterrent or preventive effect, vis-a-vis, the employee. It serves the purpose of setting up an example or teaching a lesson to class of erring employees and thereby restores and satisfies the ego of the employer that an erring employee is not permitted to go scot free despite his retirement."

Adequacy of punishment is a function to be discharged by the disciplinary authority. Hence, to what extent or for how long the pension should be withheld is the function to be performed by the Governor. Ordinarily, the Court should not interfere with the order made by the Governor. Unless the order impugned is found to be unconscionably disproportionate to the guilt established, the Court should not interfere with such order. In the present case, the guilt established against the petitioner reveals lack of integrity. The petitioner had also acted in a manner not befitting to a Police Officer. For the said guilt proved against the petitioner, if the Governor had thought it proper to impose deduction in pension, as aforesaid, no interference is warranted. Further, the said deduction from the monthly pension of the petitioner cannot be said to be unconscionably disproportionate to the nature of guilt established against the petitioner. No interference is, therefore, warranted.

No other contention is raised before me. The petition is dismissed with costs. Rule is discharged.

{Miss R.M Doshit, J.}

Prakash*